IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO. 516 OF 2003

Shri Pramod Baburao Pawar
R/at Chitralekha Bldg, 1st Floor,
R.No./4, R.C.Church, Colaba, Mumbai-5.
..Applicant

vs

1. Govt.of India
through Secretary, Ministry of
Defence, New Delhi (Owner of
Military Jeep)

2. Shri Upendra S.Prabhu
22/24, Prabhu Bldg, Chandanwadi,
Gowlwadi,Mumbai - 400 002. ..Respondents

Mr.M.B.Kotak for Applicant
Mr.Y.R.Mishra for Respondent No.1

CORAM : R.M.S.KHANDEPARKAR, J

DATE: 10TH SEPTEMBER, 2004

ORAL JUDGMENT

1. Heard learned Advocate for the petitioner and the respondent no. 1. None for the respondent no. 2 though served. Inspite of repeated opportunities having been given to the said respondent, which is revealed from the orders passed from time to time, the respondent for the reasons best known to him has chosen to remain absent today.

2. The short point for consideration which arises in this application relates to illegal exercise of jurisdiction by the Claims Tribunal by discharging the respondents from their liability to pay the compensation awarded by the Claims Tribunal and consequently going beyond the decree which is not permissible for the executing court.

3. Records disclose that while allowing application for compensation, the Claims Tribunal had decreed thus:

> " The Claim Application is allowed. The Opp. party nos. 1 and 2 jointly and severally do pay compensation of Rs.45,000/- (Rupees Forty five thousand only). The Opp. party nos. 1 and 2 jointly and severally pay the interest at 9 % from 13/12/1994. The Opp. party nos. 1 and 2 shall bear costs of this application and shall pay costs to the applicant. "

4. Records further disclose that respondent no. 1 Union of India deposited a sum of Rs.39,830/- and by their application on 17th January, 2003 prayed for its discharge and exemption from further liabilities. The tribunal by its impugned order allowed the said application and declared that the respondent no.1 has been discharged from its further liability.

5. A plain reading of the application which was filed by the respondent no. 1 for discharge disclose that the same was filed on the basis that the liability of the respondent no. 1 is restricted to 50 % of the amount as awarded by the Tribunal and balance amount of 50 % to be contributed by the respondent no.2. It appears that the said contention was accepted by the tribunal without the application of mind and even without ascertaining what was the award passed in the matter.

6. The operative part of the award quoted above apparently discloses that the liability to pay the amount of compensation awarded was specifically declared to be joint and several of both the respondents and it was not distributed as 50 % to be of the respondent no.1 and balance to be of the respondent no.2. It is well settled that the executing court cannot go beyond the decree and has to adhere to the decree as has been passed by the court. Same principle will apply incase of execution of awards passed by the Claims Tribunal in relation to compensation payable to the aggrieved party. Once the award discloses the liability of the respondent nos. 1 and 2 to be joint and several, the respondent no. 1 was not entitled to contend that by paying 50 % of the amount it was entitled to be exonerated from liability in relation to the balance amount of 50 % of the compensation payable to the petitioner. In fact, in terms of Sec.168 (3) of the Motor Vehicles Act, 1988 the respondents jointly and/or severally ought to have deposited or paid the entire decretal amount within thirty days from the date of passing of the award. The award having passed fixing the liability upon the respondents as joint and several, it was not open to the tribunal to modify the said order and that too in a proceeding for execution of the award. In any event, the tribunal in execution proceedings having accepted such contention on behalf of the respondent no.1 contrary to the award itself, has clearly acted in excess of its jurisdiction and therefore the impugned order cannot be sustained and is liable to be set aside. 7. For the reasons stated above, the petition succeeds. The impugned order is hereby set aside and it is clarified that the liability to pay the compensation by both the respondents is joint and several and the respondent no.1 cannot be exonerated from payment of balance amount of 50 % payable to the petitioner in terms of the award dated 21st March, 2001. Needless to say that incase the respondent no. 1 is entitled to be reimbursed in this regard by the respondent no.2, then the respondent no. 1 would be free to take appropriate action in that regard against the respondent no. 2.

8. Matter therefore is remanded to the tribunal for due execution of the award in terms of prayer made in the execution application and proceed with the execution proceedings in accordance with the provisions of law and bearing in mind the observations made hereinabove.

9. Rule made absolute in above terms with no order as to costs.

R.M.S.KHANDEPARKAR, J